IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 13579 of 2006(N)

PETITIONER:

GEORGE JOSEPH, S/O. JOSEPH,
PHYSICAL EDUCATION TEACHER (UNDER SUSPENSION)
SACRED HEART HIGH SCHOOL, KANTHALLOOR.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS:
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1. **THE MANAGER, SACRED HEART HIGH SCHOOL KANTHALLOOR, IDUKKI.**
2. **THE HEADMASTER, SACRED HEART HIGH SCHOOL, KANTHALLOOR, IDUKKI.**
3. **THE DISTRICT EDUCATIONAL OFFICER, KATTAPPANA.**
4. **THE DEPUTY DIRECTOR OF EDUCATION, THODUPUZHA.**
5. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.**

BY ADV. SRI.P.CHANDY JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/03/2007 ALONG WITH WPC NO. 29932 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.C.NO.13579 OF 2006

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF ORDER OF SUSPENSION ISSUED BY THE MANAGER DTD. 18-12-04**
EXT.P2	**TRUE COPY OF MEMO OF CHARGES DTD. 22-12-04.**
EXT.P3	**TRUE COPY OF THE JUDGMENT IN W.P.C.NO.27370/05**
EXT.P4	**TRUE COPY OF THE ENQUIRY REPORT OF THE DEO ALONG WITH COVERING LETTER.**
EXT.P5	**TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO DEO.**
EXT.P6	**TRUE COPY OF THE G.O. DTD. 30-09-06**

RESPONDENT'S EXHIBITS

EXT.R1	**TRUE COPY OF THE COMPLAINT SUBMITTED BY H.SHEELIA SWERNA LEEJA SWEETLIN UPSA TO THE PETITIONER.**
EXT.R2	**TRUE COPY OF THE COMPLAINT DTD. 23-7-03 OF THE TEACHER-IN-CHARGE.**
EXT.R3	**TRUE COPY OF THE LETTER SUBMITTED TO R2 TO R1**
EXT.R4	**TRUE COPY OF THE COMPLAINT SUBMITTED TO R1 BY SRI.P.MONI**
EXT.R5	**TRUE COPY OF THE SAID PROCEEDINGS DTD. 18-12-04**
EXT.R6	**TRUE COPY OF THE MEMO CHARGES TO THE PETITIONER DATED 22-12-04**
EXT.R7	**TRUE COPY OF THE ORDER DTD. 3-1-05**
EXT.R8	**TRUE COPY OF THE ENQUIRY REPORT DTD. 23-7-05**
EXT.R9	**TRUE COPY OF THE JUDGMENT IN W.P.C.NO.27370/85**
EXT.R10	**TRUE COPY OF THE JUDGMENT IN W.P.C.NO.10581/06**
EXT.R11	**TRUE COPY OF THE REVISION PETITION TO THE PETITIONER .**
EXT.R12	**TRUE COPY OF THE AFFIDAVIT ALONG WITH THE APPLICATION FOR STAY.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).NOs.13579 & 29932 OF 2006

Dated this the 7th day of March, 2007

JUDGMENT

Since common questions arise in these writ petition, they are disposed of through this common judgment.

Writ petition No.13579/06 is filed by the teacher. He is the first respondent in the other writ petition. The prayer in the writ petition is for a direction to reinstate the petitioner back into service and issue necessary orders to quash Ext.P6 to the extent it directs a fresh enquiry. There are other prayers also. The very same order namely Ext.P6 in the said writ petition is challenged by the writ petitioner in W.P.(C)No.29932/06, who is the manager of the school. Disciplinary proceedings were initiated against the petitioner. Ext.P6 is produced as Ext.P12 in W.P.(C)No.29932/06. Manager challenges the order to the extent that there is a direction to reinstate the petitioner without prejudice to disciplinary action. According to the manager, the allegations raised against the

teacher are very serious and therefore without conducting an enquiry ,as in fact ordered by the Government, direction to reinstate is insupportable. According to the teacher, the very direction to conduct a fresh enquiry is not sustainable. The statement in the impugned order that the manager was not permitted to cross examine is without any basis, he submits. He would submit that all the witnesses were from the management side and the petitioner has not even called any witness of his own to give evidence. It is stated that cross examination of ones' own witnesses is not permissible.

2. In the impugned order it is found that there is reference to an enquiry report which of course stood set aside earlier on consent as evident from Ext.P3 judgment. The finding is only that both enquiry reports are not reliable and evidence is not properly collected giving equal opportunities to both sides to examine and cross examine the witnesses and the office records did not reflect satisfactory picture and therefore disciplinary action cannot be initiated based on such report. On the basis of the direction

re-enquiry is sought for.

3. I feel that the matter requires re-consideration both on the question as to whether there should be a fresh enquiry and also whether if it is found that a fresh enquiry is warranted, the petitioner in W.P.(C)No.13579/06 should be reinstated during the pendency of the fresh enquiry. Accordingly, Ext.P6 in W.P.(C)No.13579/06 and Ext. P12 in W.P.(C)No.29932/06 are quashed and the fifth respondent will consider the matter afresh in accordance with law after affording an opportunity of hearing to the petitioners or their representatives. To facilitate an early disposal of the matter, petitioners or their representatives will be present before the fifth respondent at 11:00 a.m. on 26/03/2007. The fifth respondent shall proceed to hear the petitioners and take a decision in accordance with law within a period of one month from the date of hearing.

K.M.JOSEPH
JUDGE

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